

THE STORY OF ALLOTMENT.

By TOO-QUA-STEE.

THE allotment of lands among the five civilized tribes has, by this time, progressed so far as to be well regarded as a thing of the past; it is no longer a live question, and may be properly enough spoken of in the tones of sober history. As a piece of relentless administration, it swept over these nations like the leveling blast of a cyclone. That it should have fallen more heavily upon the Cherokees than any other tribe was doubtless due to the fact that they were further advanced than any other in the career of civilization, and had a greater accumulation of valuable interests to be uprooted and blown away.

Allotment, as a permanent feature in the Indian policy of the United States, was originally suggested by the spontaneous exigencies that came finally to environ the nomadic tribes that strolled upon the western plains. The time had come in the life of the continent when it was meet, nay necessary, that Indian nomadism should be discontinued.

This expedient consisted at first in simply setting apart a small plot of ground, and then capturing the Indians by tribes, and placing them upon it, at the same time throwing around them a circle of barriers which cut them off from all possible means of escape; it was, in fact, only a species of wholesale imprisonment. The scheme was extremely radical and harsh, and, in its execution, often gave rise to scenes of deplorable inhumanity. The Indians thus wrenched so abruptly out of their old hereditary way of living, found all their accustomed notions of rightful pursuit and acquisition to be strangely out of accord with the state of the times. Their former theories of self-support became suddenly obsolete and ineffectual. The familiar implements with which they had been wont, from time immemorial, to procure their subsistence, parted with their usefulness, and assumed the character of only melancholy mementos of an age that passed away. It is true, the various appliances of civilized industry were put into their hands with commendable liberality; but the wretched captives had neither the skill, nor the heart, to turn them to any profitable account. As to food, clothing, and all the other cardinal necessities of natural life, they had been rendered just as dependent upon the gratuities of the outside world, as if they had been shut up within the walls of a bastille.

From this elementary form of allotment in tribes to individual allotment, the step was natural and easy; it was in great favor with both whites and Indians. The former urged it with zealous solicitation because of the vast amount of fertile land which it was expected to release from Indian occupancy, and make available for white settlement. The latter were pleased with it, though from a different, yet equally cogent reason: lying helpless, as they were, at the very lowest extreme of adversity, they had come to the conclusion that their case was incapable of any further enlargement of misery, and that whatever change might take place in their condition, it must, according to the laws of natural sequence, bring along with it some sort of reaction for the better. Hence they accepted without a murmur the terms proffered by the government, and, with the facile compliance of little children, put up with just such portion of their own hereditary soil as happened to fall to them from the hands of conquerors, taking it, not as a piece of an estate justly due them, but as a "lot" coming to them somehow through the mysterious arrangements of chance.

The government was well pleased with this amiable demeanor on part of the Indians, and, in turn, adopted a truly handsome expedient in placing

its appreciation on suitable record. Tempering the proverbially cold spirit of administration with a pretty bit of tropical sentiment, it was ordered by the executive that, in awarding allotments to these captive "wards of the nation," the work should be conducted under the delicate supervision of female authority. The process was attended with not a little of that touching pathos which usually shows itself at the downfall and dissolution of old national communities. Nothing could surpass in dramatic effect the sight of those terrible men, whose warwhoop so lately startled the settlements, and defied the armies of the United States, each now marching off quietly to his appointed place of abode, and settling down peaceably to the usual conditions of American citizenship—all under the directing finger of a little, winsome white woman. It was a scene well deserving a place upon the pages of enduring history.

The flattering success that attended this initial experiment among the unsettled tribes of the west, had the effect to raise the allotment policy to the very highest pitch in popular favor. It was urged upon congress with the most persistent importunity, especially by the western states. These states, in pressing their desires upon the attention of the federal government, maintained that all conditions should be either ignored or regarded as immaterial; and that the five civilized tribes, notwithstanding their high state of civilization, and many complicated interests, should be allowed to form no exception to the general rule in dealing with Indians; that, being Indians, they were, at least technically, only "wards of the nation," and, as such, had no rights, however solemnly guaranteed, that the government was bound to respect; that all treaty agreements with them, and patents issued to them, were, in contemplation of law, only temporary expedients, and had properly to give way when crossed by the political power of the nation.

The Indians were the acknowledged owners of the territory which they occupied, the soil being held as the common property of the tribe. The adult portion of the tribes, especially those who felt the pressure of domestic obligations and duties, were living in well appointed homes tastefully embellished with all those adornments which usually characterize a civilized mode of life. These homes, too, they had fortified with an ample environment of those valuable expedients which are always needed as the only sure guarantee against dependence and want—such as farms, orchards, gardens, and pastures, together with the usual array of those miscellaneous structures which generally enter into the notion of rural convenience and comfort. In a word, there was nothing lacking to constitute these Indians one of the happiest sections of humanity in the whole world, but a reasonable degree of compliance with plighted faith on part of the United States.

Now, it can but be very obvious that an arbitrary process of allotment like that which had just been accomplished among the unsettled tribes, must have been quite a different thing, and followed by quite a different train of results, when put into execution upon a people like the five civilized tribes. The former, in contemplation of law at least, had nothing to lose by allotment, and really quite a little to gain. In their unequal struggle with the United States they were beaten, and, according to the brutal laws of war, "the spoils belonged to the victor." These hostile tribes being conquered, and taken with arms in their hands, may be said to have lost everything. The ownership of their territory, together with the soil, passed to the United States; and it was a feeble compliment

to American civilization, that they were, in the end, allowed any space at all as a home upon the face of the earth. To them, an allotment partook, under the circumstances, much of the nature of a gracious gift, and, on the principle that "beggars are not allowed to be choosers," they had nothing to say as to the dimensions of the bounty.

But the five civilized tribes were not a hostile people. They had never given the least occasion for a resort, in dealing with them, to anything like a war measure. They were a domestic community, living peaceably under the guaranteed protection of the United States. And yet, in 1898, the federal government suddenly assumed an unfriendly bearing toward these inoffensive people, and began to deal with them as conquered enemies. Congress, by a piece of formal legislation, popularly known as the Curtis law, abolished their civil government, annulled their laws, abrogated their treaties, repudiated their patents, assumed absolute proprietorship of their lands, and declared off all conditions affecting the custody of their public funds. This act was put into force under the pretense of seeking "the better protection" of these Indians; but the wrong done them by its sinister provisions was too poignant to allow them to be deceived as to its real intent. They could but distrust the constitutionality of an act that conflicted so squarely with the principles of justice. They turned therefore to the judicial arm of the federal government for relief; but they were simply told by the supreme court of the United States, in a carefully considered case, that the American Indians, being "wards of the nation," had no rights that the government was bound to respect; that in dealing with them, the end to be arrived at by the guardian authorities, was not the conservation of their legal rights, (if they had any,) but the promotion of their best good.

The most effective argument employed upon the floor of congress in securing the passage of this extraordinary act, was the alleged fact that the "cattle barons," and a few other business clans, had so far monopolized the surface of the common domain as to push the "fullbloods," the original owners of the soil, back into the barren flint hills, where they were doomed to an endless, and very painful, struggle with the demon of poverty and destitution. It was said that the only sure remedy for this deplorable state of things, was simply to put each Indian in possession of his own rightful portion of the common estate, and then accord to him, like any other citizen of the United States, a place under the protecting aegis of the judicial branch of the federal government.

As an anticipated result, the obnoxious "cattle barons" surrendered their footing upon the face of the earth, and peacefully disappeared in the general fog of the times; and their countless miles of fencing were removed, ostensibly for the purpose of subjecting the vast areas which they enclosed to a per capita distribution among the Indians.

So far, the movement was unquestionably correct; but the many bright promises of which its beginning was so full, were doomed to withering disappointment. The hateful evil of monopoly, for which the scheme of allotment had been so hopefully devised as a sovereign remedy, became even more rampant, and oppressive, than ever; it had truly undergone a material change in form, but in effecting the variation, its relentless power was enhanced a thousandfold. After the departure of the troublesome "cattle barons," the monopolist with which the Indians had then to deal was no less a personage than the government of the United States.

As a means of monopolizing the inhabitable surface of the Indian domain, curtailing the chances of the people for securing desirable homes, the many segregations ordered by the gov-

ernment, in one way or another was far more effective than anything that had ever been met with in all the vile usurpations of the "cattle barons." The exact number of acres set apart in these reserves was never commonly known; that was a matter, a clear knowledge of which was never vouchsafed to the popular mind. However, by the collation of a few known facts connected with the subject, and reasoning upon them in the light of common apprehension, it would seem to be safe in assuming that the amount of ground monopolized in this way embodied thousands and thousands of acres, with an actual value of more than a million of dollars. In the removal of this great portion from the common estate, as a preliminary step to final allotment, the Indians failed to detect anything which, to their minds, seemed in the least to sustain the flow of kindly professions that characterized the language of the original promoters of the measure; on the contrary they felt the stringent beltings of adversity drawn around them still tighter than ever, and that too with all hope of a coming day of relief forever cut off. Before they were allowed to know what their portion was to be, the general interests of religion, education, internal improvements, commerce, and all sorts of questionable claims, had to be provided for out of the very best of the property. In a scheme of allotment devised professedly for the purpose of securing them in the possession of their rightful portion of the lands, it turned out that they were to have only a distributive share in a small surplus remaining after every form of deduction had been made for which the sophistry of greed could possibly frame an apology.

And yet it seems not to have been enough that all claims in actual existence should be satisfied in this preferential way. The sordid source from which had already issued so many exorbitant demands against the Indian estate, was not to falter in its fruitfulness as long as there remained a single acre within the reach of acquisition. Accordingly the Dawes commission were authorized, and required, to continue, at their discretion, to segregate space for townsites, especially along newly constructed railroads, as long as there remained any Indian land not as yet rendered unavailable for such a purpose by actual allotment.

Among the various acts of congress shaping the plan of allotment, there was one which authorized the secretary of the interior to lease out to private parties for mining purposes an amount of these Indian lands limited by nothing more definite than his own sovereign discretion. Under this provision, large tracts were selected by would-be lessees, who had drawn up contracts in due form, and placed them on file in the secretary's office to await his approval. In the meantime, at the solicitation of the Indians, congress passed an act so far modifying the plan of allotment as to annul the power of the secretary to execute such leases. This act, though, was not to take effect until it had been ratified by a popular vote of the Indians. Accordingly an election was called to take place on the 7th day of August, 1902. It was this inhibitory effect upon the power of the secretary that most commended the act to the good opinion of the Indians; indeed it was relied upon by the friends of the measure as the only possible guarantee of a ratification at the polls. It was well known that the Indians had been, for a long time, looking with extreme aversion upon the indiscriminate handing out of their lands to moneyed syndicates under long-time leases; and that they were not unwilling to fall in with almost any arrangement that would save their property from such an unjust sequestration. These leases were, from their standpoint, so obviously in conflict with what was just, and morally right, that the idea largely prevailed

among them, that the secretary, in making them, acted more in obedience to positive law, than in compliance with his own inclination; and that he would be only too willing to regard the pendency of the ratification campaign as a suitable occasion for withholding his hand, with the hope that the result of the vote might relieve him of any further part in so unpleasant a piece of administration. A canvass of the votes showed a decided majority in favor of ratification; and public feeling among the Indians had just risen to its full swell of rejoicing over the defeat of the hateful lease measure, when they were informed by dispatches from Washington that the secretary, only a few hours before the day of election, had approved, and made effective, the very leases which constituted the main object of their displeasure. The news affected the minds of the Indians with inexpressible surprise and disappointment. The result was, they found themselves committed irrevocably, by their own unwary consent, to a scheme of allotment in which they had waived all their treaty guarantees, and rights under their patent.

The spirit of speculation everywhere, apparently throughout the whole United States, was on fire, and dancing on tiptoe. A newly discovered country, of unnumbered and inexhaustible resource, with nothing to hinder acquisition but such feeble regard as humanity saw fit to accord to an alien and uncongenial race, presented a temptation in the presence of which the best virtue of a christian civilization proved to be absolutely helpless.

Among the first forms in which avarice began to prey upon the wellbeing of the Indians was one which grew directly out of the oppressive nature of the laws which had been so recently precipitated into the Territory. Lawyers without number flocked into the country, like sheep into a new pasture. These laws were so obviously in conflict with reason, as well as every known principle of civil jurisprudence, that it was an easy matter for them, especially those who had acquired a little fame upon the floor of congress, or elsewhere, to make the unsophisticated Indians believe that relief was feasible through the courts, and that nothing was needed to entire success, but a stupendous appropriation of funds; but when the case reached Washington it was invariably dismissed on the hackneyed doctrine that the "judiciary had no power to coerce the executive," and that an "Indian is a ward of the nation," and has no rights that the legislative was bound to respect. At this point the matter was generally ended, only leaving behind a fearful vacuum in the national treasury.

It would be untrue to the cause of reliable history to leave unmentioned right here a certain scheme of speculation which came into vogue during the days of Indian allotment, and which was singularly unique. If there is anything in this world more justly entitled, than any other, to protection against all the forms of imposition and wrong, it is the orphan—the fatherless and motherless children which the inexorable laws of nature have thrown for nurture upon the cold hands of the community. The man who could conceive the idea of capitalizing the pathetic exigencies of orphanage, certainly had a business eye of the most unusual penetration. And yet there were not a few thrifty geniuses who hit upon the scheme of hunting out and gathering up Indian orphans, and, under the pretense of benevolently caring for their infantile wants, secure, through the help of federal court, personal control and use of their allotments until the little ones become of age. The profit which a guardian might receive from such a business is too manifest to need explanation. Whatever indirect credit may be due to such a method of gain, the prompting motive, when viewed in connection with the sacredness of the means em-

ployed, was unquestionably contemptible. That such a business could have been carried on successfully under the sheltering wing of the federal court, reflects no small shadow of reproach upon the justice and decency of the times.

A land office was established the work of which was, to assign to each Indian his proper portion of land called his allotment. The method devised for ascertaining the size of this allotment in the Cherokee nation was not a little curious. After setting apart all reserves, it was assumed that the interest of each Indian in the remainder was worth just \$325.65; this sum divided by the appraised value per acre of the land in question, gave the dimension of the allotment. The division, however, was arbitrarily required to show a quotient which could be exactly divided by 10; but if such quotient could not be thus divided, the allottee had to forfeit the odds. To illustrate: Land at \$5 per acre showed an allotment of 65.13 acres; but as the allottee could take only 60 acres, he was simply shaved to the amount of 5.13 acres.

This species of petty trimming, as carried out in the scheme of Cherokee allotment, amounted, in the aggregate, to many handsome estates.

The Dawes commission, who were responsible for this little variety of questionable doing, apologized for it by saying that the 13th section of the Cherokee agreement required each allotment to consist of a certain number of ten acre tracts, and without any fraction thereof.

But this construction of the section was obviously incorrect. It says, in substance, that in preparing the ground for allotment, the least legal subdivision, that is to say, the least subdivision that shall be conceived of as having been made in a square, according to the general plan of the government survey, shall be ten acres. There is a material difference between the meaning of the word "legal" and that of the word "lawful." It was not intended to be said that the least "lawful" subdivision must be ten acres in a square. The statute intentionally left the allotting commission at liberty to make any other still smaller subdivision, and in any shape that might best suit the convenience of the allottee.

There was developed under the shadow of the land office a curious kind of industry which deserves commemoration, as an illustration of the wonderful persistence with which avarice hangs upon the heels of the Indian. No sooner had the office come to rest upon its foundation, than moneyed centers were located at convenient range all around it, in banks, land agencies, trust companies, (and what not) for the purpose of purchasing, or leasing, allotments as soon as they were assigned. These institutions, by means of timely survey, had acquired exact knowledge of the tracts of which they desired to obtain control. Agents went out among the Indians whose business it was to bargain with, and bring in, such indiscreet members of the tribe as they could prevail upon, mostly young men and pliant-minded negroes, and, by paying them the merest trifle of present money, induced them to "file upon," and lease the prescribed tract; whereupon the real estate institution turned and let out the same tracts, at enormous rental, to full-handed strangers from the states.

The authorities of the land office by no means discouraged this kind of dealing. The floors of the office were generally thronged with agents whose business it was to rope in these pitiable objects of imposition.

It is curious to observe how the best laid plans for good can sometimes be perverted to the basest of ends. Apparently from the noblest of motives, the allotting commission had made a rule giving the "fullbloods" absolute right of way in the land office. Accordingly when the "shark" appeared at the door of the office with his band of dumb fullblood victims, all he had to do was simply to call to the door-keeper, and say, "sit, here are some fullbloods desiring to file." At once the way was cleared. All other proper applicants were dismissed for the time. The young Indians file; the lease is executed upon the spot, and the poor, nominal landlords step out, and stroll away with a penny in their pockets, destitute and absolutely homeless, at least for the next fifteen years, or such a matter.

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